

**REMARKS**

**A. The Status of the Claims and the Amendments**

Claims 16, 18-22, 24-28, 30-34, 36-44, 48-51, 53-61, 64, 66, 74-76, 82, 84, 85 and 94 have been amended. Claims 62-63, 65, and 67 have been canceled herein without prejudice or disclaimer of any previously claimed subject matter. Accordingly, claims 16-61, 64, 66, and 68-94 are pending. The amendment does not introduce any new matter, as the recited compounds and methods are fully disclosed in the originally filed specification.

**B. The Statutory Type Double Patenting Rejection Under 35 U.S.C. § 101**

Claims 16-72 and 84-85 have been rejected under 35 U.S.C. § 101 as claiming the same invention as claims 1-6 of U.S. Patent No. 6,716,825 (the '825 patent). Claims 73-83 were rejected under 35 U.S.C. § 101 as claiming the same invention as claims 1-3 and 13 of the '825 patent. This rejection is respectfully traversed on the grounds discussed below.

In order for a double patenting rejection under 35 U.S.C. § 101 to be proper, the claims must be identical, since the statutory term "same invention" upon which a double patenting rejection under 35 U.S.C. § 101 is founded has been determined to mean the invention directed to the "identical subject matter." *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Accordingly, it is clear that if the scope of the granted claims and that of the pending claims are not identical, a statutory double patenting rejection cannot be used.

From the review of the claims pending in this application and the claims of the '825 patent it is clear that their respective scopes are not identical. For instance, while claim 5 of the '825 patent is directed to a large group of derivatives of cidofovir, adefovir, cyclic cidofovir or tenofovir, pending claim 16 here is directed only to much smaller group of such derivatives, i.e., only to phosphonate esters of cidofovir, adefovir, cyclic cidofovir or tenofovir

covalently linked to an alkylglycerol, alkylpropanediol, 1-S-alkylthioglycerol, alkoxyalkanol or alkylethanol. Clearly, the pending claims encompass a smaller area, and thus may be considered species to a larger genus claimed in the '825 patent. It has been established that a genus is usually not patentable over a species, but a species may be patentable over the genus. See, *Eli Lilly & Co. v. Barr Laboratories, Inc.*, 222 F.3d 973, 55 USPQ2d 1609 (Fed. Cir. 2000). Accordingly, the difference in scope between the claims of the '825 patent and the pending claims, leads to a conclusion that the two sets of claims are patentably distinguishable.

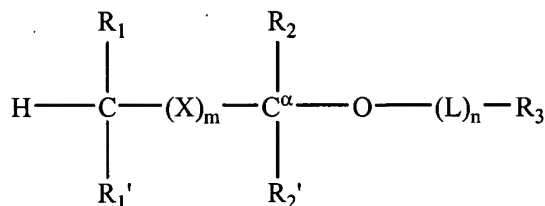
It is submitted that at the most, the '825 patent is the dominating patent. It was previously held that domination exists when a broad claim of an earlier patent reads on a narrower claim of a later patent, such that a party cannot practice the later patent without infringing the earlier patent. *Eli Lilly, supra* (citing *In re Kaplan*, 789 F.2d 1574, 1577-78, 229 USPQ 678, 682 (Fed. Cir. 1986)). It is also a well established rule that domination, without more, i.e., without separate double patenting grounds cannot support a double patenting rejection. *Id.* See also *In re Sarrett*, 327 F.2d 1005, 1014-15, 140 USPQ 474, 482 (CCPA 1964) and MPEP § 804. Since separate double patenting grounds are absent here, because none of the claims of the present application are identical to those of the '825 patent, it is respectfully submitted that the double patenting rejection does not apply.

As discussed below, Applicant encloses a Terminal Disclaimer that disclaims the terminal portion of the patent issuing on this application that would extend beyond the term of U.S. Patent No. 6,716,825 (the parent patent).

**Claim by Claim Comparison of Pending Claims to Claims of the '825 Patent**

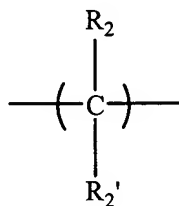
Claim 1 of the '825 patent recites the following:

A phosphonate compound having the structure:



wherein:

$\text{R}_1$  and  $\text{R}_1'$  are independently -H, optionally substituted - $\text{O}(\text{C}_1-\text{C}_{24})$ alkyl, - $\text{O}(\text{C}_1-\text{C}_{24})$ alkenyl, - $\text{O}(\text{C}_1-\text{C}_{24})$ acyl, - $\text{S}(\text{C}_1-\text{C}_{24})$ alkyl, - $\text{S}(\text{C}_1-\text{C}_{24})$ alkenyl, or - $\text{S}(\text{C}_1-\text{C}_{24})$ acyl, wherein at least one of  $\text{R}_1$  and  $\text{R}_1'$  are not -H, and wherein said alkenyl or acyl optionally have 1 to about 6 double bonds,  $\text{R}_2$  and  $\text{R}_2'$  are independently -H, optionally substituted - $\text{O}(\text{C}_1-\text{C}_7)$ alkyl, - $\text{O}(\text{C}_1-\text{C}_7)$ alkenyl, - $\text{S}(\text{C}_1-\text{C}_7)$ alkyl, - $\text{S}(\text{C}_1-\text{C}_7)$ alkenyl, - $\text{O}(\text{C}_1-\text{C}_7)$ acyl, - $\text{S}(\text{C}_1-\text{C}_7)$ acyl, - $\text{N}(\text{C}_1-\text{C}_7)$ acyl, - $\text{NH}(\text{C}_1-\text{C}_7)$ alkyl, - $\text{N}((\text{C}_1-\text{C}_7)\text{alkyl})_2$ , oxo, halogen, - $\text{NH}_2$ , -OH, or -SH;  
 $\text{R}_3$  is a phosphonate derivative of a pharmacologically active compound linked to a functional group on optional linker L or to an available oxygen atom on  $\text{C}^{\alpha}$ ;  
X, when present, is:



L is a valence bond or a bifunctional linking molecule of the formula - $\text{J}-(\text{CR}_2)_t-\text{G}-$ , wherein t is an integer from 1 to 24, J and G are independently -O-, -S-, - $\text{C}(\text{O})\text{O}-$ , or -NH-, and R is -H, substituted or unsubstituted alkyl, or alkenyl; m is an integer from 0 to 6; and n is 0 or 1.

Claim 2 of the '825 patent recites a phosphonate compound of claim 1, wherein the phosphonate derivative is a bisphosphonate. Claim 3 recites a phosphonate compound of claim 2, wherein the bisphosphonate is alendronate, etidronate, tiludronate, ibandronate, EB-1053,

pamidronate, olpadronate, amino-olpadronate, clodronate, or risedronate. Claims 4 of the '825 patent recite a phosphonate compound of claim 1 wherein the phosphonate derivative is an antiviral nucleoside. Claim 5 recites a phosphonate compound of claim 4, wherein the phosphonate derivative is adefovir, cidofovir, cyclic cidofovir, or tenofovir. In claim 6, the phosphonate derivative is azidothymidine. Claim 13 recites a method of treating a viral infection comprising administering to a subject in need thereof an effective amount of a compound of claim 1. Thus, all of the claims in the '825 patent cited by the Examiner require the phosphonate compound to have the structure recited in claim 1.

In contrast, independent claim 16 of the instant application recites a phosphonate of an anti-viral compound selected from the group consisting of cidofovir, adefovir, cyclic cidofovir and tenofovir, covalently linked to a molecule selected from the group consisting of an alkylglycerol, alkylpropanediol, 1-S-alkylthioglycerol, alkoxyalkanol, or alkylethanedol, or its pharmaceutically acceptable salt.

The scope of embodiments recited in claim 16 are different than the scope of the claims of the '825 patent. Claim 1 of the '825 patent recites a specific formula defined by the limitations of the claim, which is not identical to the embodiments claimed in claim 16 of the present application.

Claim 17 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is cidofovir. Although claim 5 of the '825 patent recites a phosphonate compound according to claim 4, wherein the phosphonate derivative is adefovir, cidofovir, cyclic cidofovir, or tenofovir, the scope of claim 17 is not identical to the scope of claim 5 of the '825 patent. Further, none of claims 1-6 or 13 of the '825 patent are solely directed to the specific embodiment wherein cidofovir is covalently linked to a molecule selected from the group consisting of an alkylglycerol, alkylpropanediol, 1-S-alkylthioglycerol,

alkoxyalkanol, or alkylethanediol, or its pharmaceutically acceptable salt, as defined by the current claim 17.

Claim 18 of the instant application recites a compound of claim 17 wherein cidofovir is covalently linked to an alkylpropanediol. None of the claims in the '825 patent are limited to this specific embodiment, wherein cidofovir is covalently linked to an alkylpropanediol. Thus, the scope of the specifically claimed formula in the '825 patent is not identical to the scope of claim 18 of the instant application.

Similarly, claim 19 of the instant application recites a compound of claim 17 wherein cidofovir is covalently linked to an alkylethanediol. Claim 20 of the instant application recites a compound of claim 17 wherein cidofovir is covalently linked to an alkoxyalkanol. Claim 21 of the instant application recites a compound of claim 17 wherein cidofovir is covalently linked to an alkylglycerol. Claim 22 of the instant application recites a compound of claim 17 wherein cidofovir is covalently linked to an 1-S-alkylthioglycerol. Thus, the scope of the embodiments defined by the current claims 19-22 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 23 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is adefovir. Although claim 5 of the '825 patent recites a phosphonate compound according to claim 4, wherein the phosphonate derivative is adefovir, cidofovir, cyclic cidofovir, or tenofovir, the scope of claim 23 is not identical to the scope of claim 5 of the '825 patent. Further, none of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed embodiment, wherein adefovir is covalently linked to a molecule selected from the group consisting of an alkylglycerol, alkylpropanediol, 1-S-alkylthioglycerol, alkoxyalkanol, or alkylethanediol, or its pharmaceutically acceptable salt, as defined by the current claim 23.

Claim 24 of the instant application recites a compound of claim 23 wherein adefovir is covalently linked to an alkylpropanediol. None of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed embodiment, wherein adefovir is covalently linked to an alkylpropanediol. Thus, the scope of the specifically claimed formula in the '825 patent is not identical to the scope of claim 24 of the instant application.

Similarly, claim 25 of the instant application recites a compound of claim 23 wherein adefovir is covalently linked to an alkylethanol. Claim 26 of the instant application recites a compound of claim 23 wherein adefovir is covalently linked to an alkoxyalkanol. Claim 27 of the instant application recites a compound of claim 23 wherein adefovir is covalently linked to an alkylglycerol. Claim 28 of the instant application recites a compound of claim 23 wherein adefovir is covalently linked to an 1-S-alkylthioglycerol. The scope of the embodiments defined by current claims 25-28 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 29 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is cyclic cidofovir. Although claim 5 of the '825 patent recites a phosphonate compound according to claim 4, wherein the phosphonate derivative is adefovir, cidofovir, cyclic cidofovir, or tenofovir, the scope of claim 29 is not identical to the scope of claim 5 of the '825 patent. Further, none of claims 1-6 or 13 of the '825 patent are solely directed to the specific embodiment wherein cyclic cidofovir is covalently linked to a molecule selected from the group consisting of an alkylglycerol, alkylpropanediol, 1-S-alkylthioglycerol, alkoxyalkanol, or alkylethanol, or its pharmaceutically acceptable salt, as defined by the current claim 29.

Claim 30 of the instant application recites a compound of claim 29 wherein cyclic cidofovir is covalently linked to an alkylpropanediol. None of claims 1-6 or 13 in the '825 patent are solely directed to the specifically claimed embodiment, wherein cyclic cidofovir is covalently linked to an alkylpropanediol, as defined by current claim 30. Thus, the scope of the

specifically claimed formula in the '825 patent is not identical to the scope of claim 30 of the instant application.

Similarly, claim 31 of the instant application recites a compound of claim 29, wherein cyclic cidofovir is covalently linked to an alkylethanediol. Claim 32 of the instant application recites a compound of claim 29 wherein cyclic cidofovir is covalently linked to an alkoxyalkanol. Claim 33 of the instant application recites a compound of claim 29 wherein cyclic cidofovir is covalently linked to an alkylglycerol. Claim 34 of the instant application recites a compound of claim 29 wherein cyclic cidofovir is covalently linked to an 1-S-alkylthioglycerol. The scope of embodiments defined by the current claims 31-34 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 35 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is tenofovir. Although claim 5 of the '825 patent recites a phosphonate compound according to claim 4, wherein the phosphonate derivative is adefovir, cidofovir, cyclic cidofovir, or tenofovir, the scope of claim 35 is not identical to the scope of claim 5 of the '825 patent. Further, none of claims 1-6 or 13 of the '825 patent are solely directed to the specific embodiment wherein tenofovir is covalently linked to a molecule selected from the group consisting of an alkylglycerol, alkylpropanediol, 1-S-alkylthioglycerol, alkoxyalkanol, or alkylethanediol, or its pharmaceutically acceptable salt, as defined by the current claim 35.

Claim 36 of the instant application recites a compound of claim 35 wherein tenofovir is covalently linked to an alkylpropanediol. None of claims 1-6 or 13 in the '825 patent are directed to this specifically claimed embodiment, wherein tenofovir is covalently linked to an alkylpropanediol.

Similarly, claim 37 of the instant application recites a compound of claim 35 wherein tenofovir is covalently linked to an alkylethanediol. Claim 38 of the instant application recites a compound of claim 35 wherein tenofovir is covalently linked to an alkoxyalkanol. Claim 39 of the instant application recites a compound of claim 35 wherein tenofovir is covalently linked to an alkylglycerol. Claim 40 of the instant application recites a compound of claim 35 wherein tenofovir is covalently linked to an 1-S-alkylthioglycerol. The scope of the embodiments defined by the current claims 37-40 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 41 of the instant application recites a compound of claim 16 wherein the phosphonate is linked through the 3-position of the alkylglycerol, alkylpropanediol or 1-S-alkylthioglycerol. None of claims 1-6 or 13 in the '825 patent are solely directed to the specific embodiment of a phosphonate of an antiviral compound selected from cidofovir, adefovir, cyclic cidofovir, and tenofovir, covalently linked through the 3-position to an alkylglycerol, alkylpropanediol, or 1-S-alkylthioglycerol, as defined by current claim 41.

None of claims 1-6 or 13 of the '825 patent are limited to the specific embodiment wherein a phosphonate or methylene phosphonate of an antiviral compound is covalently linked to a molecule selected from the group consisting of an alkylglycerol, alkylpropanediol, 1-S-alkylthioglycerol, alkoxyalkanol, or alkylethanediol, or its pharmaceutically acceptable salt, as claimed in claim 42 of the instant application.

Claim 43 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is covalently linked to an alkylpropanediol. None of claims 1-6 or 13 of the '825 patent are solely directed to the specific embodiment wherein the phosphonate of an antiviral compound is covalently linked to an alkylpropanediol.



Claim 44 of the instant application recites a compound of claim 41 wherein the phosphonate of an antiviral compound is cidofovir. Although claim 5 of the '825 patent recites a phosphonate compound according to claim 4, wherein the phosphonate derivative is adefovir, cidofovir, cyclic cidofovir, or tenofovir, the scope of claim 44 is not identical to the scope of claim 5 of the '825 patent. Further, none of claims 1-6 or 13 of the '825 patent are solely directed to the specific embodiment wherein cidofovir is covalently linked through the 3-position of an alkylglycerol, alkylpropanediol, or 1-S-alkylthioglycerol, as defined by the current claim 44.

Claim 45 of the instant application recites a compound of claim 43 wherein the alkylpropanediol is 1-O-hexadecylpropanediol or 1-octadecylpropanediol. None of claims 1-6 or 13 of the '825 patent are solely directed to the specific embodiment wherein a phosphonate of an antiviral compound is covalently linked to a 1-O-hexadecylpropanediol or 1-octadecylpropanediol, as recited in current claim 45.

Similarly, claim 46 of the instant application recites a compound of claim 43 wherein the alkylpropanediol is 1-O-hexadecylpropanediol or 1-octadecylpropanediol and the phosphonate of an antiviral compound is cyclic cidofovir. Claim 47 of the instant application recites a compound of claim 43 wherein the alkylpropanediol is 1-O-octadecylpropanediol. The scope of the embodiments defined by current claims 46 and 47 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 48 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is covalently linked to an alkylethenediol. None of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed embodiment, wherein the phosphonate of an antiviral compound is covalently linked to an alkylethenediol, as recited in current claim 48.

Claim 49 of the instant application recites a compound of claim 45, wherein the phosphonate of an antiviral compound is cidofovir. None of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed embodiment, wherein cidofovir is covalently linked to 1-O-hexadecylpropanediol or 1-octadecylpropanediol, as defined by the current claim 49.

Claim 50 of the instant application recites a compound of claim 48, wherein the alkylethanol is 1-O-octadecylethanol. None of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed embodiment, wherein a phosphonate of an antiviral compound is covalently linked to 1-octadecylethanol, as defined by current claim 50.

Claim 51 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is covalently linked to an alkylglycerol. None of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed embodiment, wherein the phosphonate of an antiviral compound is covalently linked to an alkylglycerol, as defined by the current claim 51.

Claim 52 of the instant application recites a compound of claim 53 wherein the phosphonate of an antiviral compound is cidofovir. None of claims 1-6 or 13 of the '825 patent claim this embodiment specifically, wherein cidofovir is covalently linked to a 1-O-alkylglycerol.

Similarly, claim 53 of the instant application recites a compound of claim 51 wherein the alkylglycerol is 1-O-alkylglycerol. Claim 54 of the instant application recites a compound of claim 51 wherein the alkylglycerol is 3-O-alkylglycerol. The scope of the embodiments defined by the current claims 53 and 54 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 55 of the instant application recites a compound of claim 53 wherein the phosphonate of an antiviral compound is cyclic cidofovir. None of claims 1-6 or 13 of the '825 patent are solely directed to this specifically claimed embodiment, wherein cyclic cidofovir is covalently linked to an 1-O-alkylglycerol.

Similarly, claim 56 of the instant application recites a compound of claim 54 wherein the phosphonate of an antiviral compound is cyclic cidofovir. Claim 57 of the instant application recites a compound of claim 54 wherein the phosphonate of an antiviral compound is cidofovir. Claim 58 of the instant application recites a compound of claim 53 wherein the phosphonate of an antiviral compound is adefovir. Claim 59 of the instant application recites a compound of claim 54 wherein the phosphonate of an antiviral compound is adefovir. Claim 60 of the instant application recites a compound of claim 53 wherein the phosphonate of an antiviral compound is tenofovir. Claim 61 of the instant application recites a compound of claim 54 wherein the phosphonate of an antiviral compound is tenofovir. The scope of the embodiments defined by the current claims 56-61 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 64 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is covalently linked to an 1-S-alkylthioglycerol. None of claims 1-6 or 13 of the '825 patent are solely directed to this claimed embodiment, wherein the phosphonate of an antiviral compound is covalently linked to an 1-S-alkylthioglycerol, as defined by the current claim 64.

Claim 66 of the instant application recites a compound of claim 16 wherein the phosphonate of an antiviral compound is covalently linked to an alkyloxyalkanol. None of claims 1-6 or 13 of the '825 patent are solely directed to this specifically claimed embodiment, wherein the phosphonate of an antiviral compound is covalently linked to an alkyloxyalkanol, as defined by the current claim 66.

Claim 68 of the instant application recites a compound of claim 66 wherein the alkyloxyalkanol is a 1-O-alkylpropane-3-ol. None of claims 1-6 or 13 of the '825 patent are solely directed to this specifically claimed embodiment, wherein the phosphonate of an antiviral compound is covalently linked to an 1-O-alkylpropane-3-ol, as defined by the current claim 68.

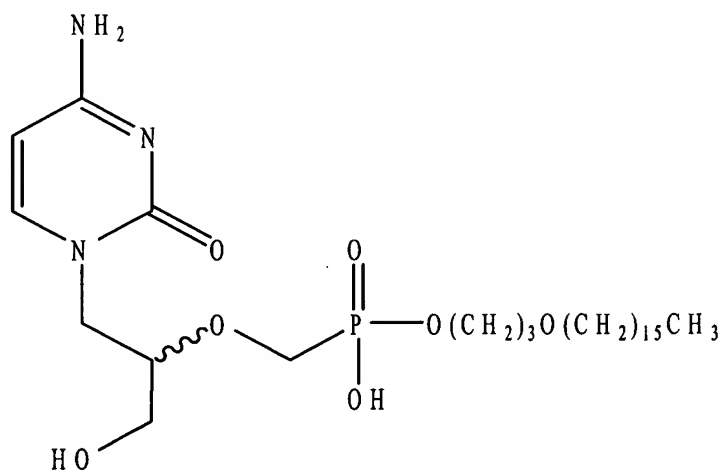
Similarly, claim 69 of the instant application recites a compound of claim 68 wherein the phosphonate of an antiviral compound is cidofovir. Claim 70 of the instant application recites a compound of claim 68 wherein the phosphonate of an antiviral compound is cyclic cidofovir. Claim 71 of the instant application recites a compound of claim 68 wherein the phosphonate of an antiviral compound is tenofovir. Claim 72 of the instant application recites a compound of claim 68 wherein the phosphonate of an antiviral compound is adefovir. The scope of the embodiments defined by the current claims 69-72 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 73 of the instant application recites a method for treating a viral disease selected from human immunodeficiency virus, influenza, herpes simplex virus, human herpes virus, cytomegalovirus, hepatitis B and C virus, Epstein-Barr virus, varicella zoster virus, orthopox virus, ebola virus and papilloma virus comprising administering an effective amount of a compound of claim 16 optionally in a pharmaceutically acceptable carrier. None of claims 1-6 or 13 of the '825 patent are solely directed to this specifically claimed embodiment of claim 73.

Similarly, claim 74 of the instant application recites a method of claim 73 wherein the virus is an orthopox virus selected from variola major and minor, vaccinia, smallpox, cowpox, camelpox, and monkeypox. Claim 75 of the instant application recites a method of claim 73 wherein the virus is human immunodeficiency virus. Claim 76 of the instant application recites a method of claim 73 wherein the virus is influenza. Claim 77 of the instant application recites a method of claim 73 wherein the virus is herpes. Claim 78 of the instant application recites a method of claim 73 wherein the virus is cytomegalovirus. Claim 79 of the instant application

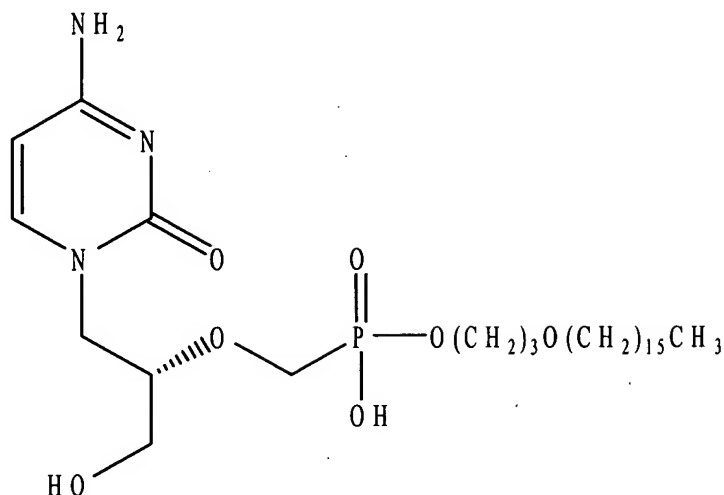
recites a method of claim 73 wherein the virus is hepatitis B. Claim 80 of the instant application recites a method of claim 73 wherein the virus is hepatitis C. Claim 81 of the instant application recites a method of claim 73 wherein the virus is Epstein-Barr virus. Claim 82 of the instant application recites a method of claim 73 wherein the virus is varicella zoster virus. Claim 83 of the instant application recites a method of claim 73 wherein the virus is papilloma. The scope of the embodiments defined by the current claims 74-83 is different from the scope of claims 1-6 and 13 of the '825 patent.

Claim 84 of the instant application recites an antiviral phosphonate compound of claim 16 with the following structure:



None of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed structure recited in claim 84.

Claim 85 of the instant application recites an antiviral phosphonate compound of claim 16 with the following structure:



None of claims 1-6 or 13 of the '825 patent are solely directed to the specifically claimed structure recited in claim 85.

Similarly, claim 86 recites 1-O-octadecylpropanediol-3-cidofovir. Claim 87 recites 1-O-octadecylethanol-2-cidofovir. Claim 88 recites 1-O-hexadecylpropanediol-3-cidofovir. Claim 89 recites 1-O-hexadecylpropanediol-3-cyclic cidofovir. Claim 90 recites 1-O-octadecylpropanediol-3-cyclic cidofovir. Claim 91 recites 1-O-octadecylethanol-2-cyclic cidofovir. Claim 92 recites 1-O-hexadecylpropanediol-3-adefovir. Claim 93 recites 1-O-octadecyl-sn-glycero-3-adefovir. The scope of the embodiments defined by current claims 86-93 is different from the scope of claim 1-6 and 13 of the '825 patent.

Claim 94 recites a pharmaceutical composition using an effective amount of the compounds recited in any one of claims 16 and 84-93, in combination with a pharmaceutically acceptable carrier. None of claims 1-6 or 13 of the '825 patent recite a pharmaceutical composition as claimed.

The presence of overlapping subject matter is not sufficient for a double patenting rejection under 35 U.S.C. § 101. Since the cited claims of the '825 patent are not *identical* to the current claims of the instant application, withdrawal of the rejection is requested.

**Obviousness-Type Double Patenting**

While the Examiner did not raise the issue of obviousness-type double patenting, Applicant submits with this response a Terminal Disclaimer which disclaims the terminal portion of the term of a patent issuing on this application which would extend beyond the term of the '825 patent. This Terminal Disclaimer obviates a rejection under the judicially created doctrine of obviousness-type double patenting.

**CONCLUSION**

In view of the above amendments and remarks, reconsideration and favorable action on all claims are respectfully requested. In the event any matters remain to be resolved, the Examiner is requested to contact the undersigned at the telephone number given below so that a prompt disposition of this application can be achieved.

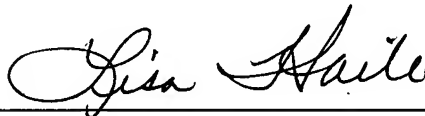
In re Application of  
Hostetler et al.  
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Filed: January 15, 2004  
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PATENT  
Attorney Docket No.: UCSD1240-3

Enclosed is Check No. 578516 in the amount of \$825.00 to cover the three-month extension fee, the Notice of Appeal fee, and the terminal disclaimer fee. No other fees are deemed necessary. However, the Commissioner is hereby authorized to charge any additional fees associated with the filing submitted herewith, or credit any overpayment, to Deposit Account No. 07-1896.

Respectfully submitted,

Date: July 19, 2005



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